

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEPHEN JOHN CLAYTON, et al.,

CASE NO. C23-1324JLR

Plaintiffs,

## ORDER

V.

DOES,

## Defendants.

Before the court is *pro se* Plaintiffs Stephen John Clayton and Christopher Stephen

Clayton's (together, "Plaintiffs") second amended complaint. (2d Am. Compl. (Dkt.

# 14).) On September 8, 2023, the court issued an order directing Plaintiffs to show

cause as to why this action should not be dismissed for lack of subject matter jurisdiction.

(9/8/23 OSC (Dkt. # 7)). The court discharged the order to show cause after Plaintiffs

amended their complaint to add a claim under federal law. (9/12/23 Order (Dkt. # 11) at

<sup>2</sup>: see 1st Am. Compl. (Dkt. # 10) at 5 (alleging a violation of the Commodity Exchange

Act (“CEA”)). Plaintiffs then filed a motion for leave to seek pre-service discovery.

1 from three nonparties. (See generally 10/9/23 Mot. (Dkt. # 12).) The court denied  
 2 Plaintiffs' motion because their claim under the CEA was unlikely to survive a motion to  
 3 dismiss. (See 12/6/23 Order (Dkt. # 13) at 7 (citing *MG Premium Ltd. v. Does 1-20*, No.  
 4 C20-5134BHS, 2020 WL 1675741, at \*2 (W.D. Wash. Apr. 6, 2020))). The court  
 5 granted Plaintiffs leave to file a second amended complaint and renewed motion for early  
 6 discovery, and they timely did so. (*Id.* at 8. See generally 2d Am. Compl.; 12/21/23  
 7 Mot. (Dkt. # 15).)

8 Having reviewed Plaintiffs' second amended complaint, the court concludes that it  
 9 lacks subject matter jurisdiction over Plaintiffs' claims and must dismiss this action.  
 10 Federal Rule of Civil Procedure 12(h)(3) provides that, “[i]f the court determines at any  
 11 time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R.  
 12 Civ. P. 12(h)(3). Plaintiffs' second amended complaint asserts claims under Title 18 of  
 13 the United States Code and for common law conversion. (See 2d. Am. Compl. at 7, 9.)  
 14 None of Plaintiffs' claims confer subject matter jurisdiction on this court.

15 First, federal question jurisdiction is foreclosed because Plaintiffs' only purported  
 16 federal claims are brought under Title 18, “a federal criminal statute which does not  
 17 create civil liability or a private right of action.” *Carrow v. Roberts*, No. EDCV 21-1525  
 18 JGB (SHKx), 2022 WL 2102934, at \*5 (C.D. Cal. Jan. 3, 2022) (quoting *ManorCare of*  
 19 *Easton PA LLC v. Nagy*, No. 13-5957, 2017 WL 4347623, at \*4 (E.D. Pa. Sept. 29,  
 20 2017)); see also *Kremen v. Cohen*, 325 F.3d 1035, 1037-38 (9th Cir. 2003) (certifying  
 21 questions about the tort of conversion to state court because conversion claims are  
 22 governed by state law). Because Plaintiffs do not state a claim under federal law, the

1 court lacks federal question subject matter jurisdiction over this case. *See* 28 U.S.C.  
2 § 1331; (*see also* 12/6/23 Order at 8 (granting leave to file a second amended complaint  
3 that plausibly alleged claims under federal law)).

4 Second, the court lacks diversity subject matter jurisdiction over this matter  
5 because Plaintiffs' second amended complaint does not include allegations that establish  
6 complete diversity of citizenship among the parties. *See* 28 U.S.C. § 1332(a)(1)  
7 (conferring diversity jurisdiction where the action is between "citizens of different  
8 States"); (*see also* 9/12/23 Order at 2 (stating that Plaintiffs cannot establish diversity  
9 jurisdiction absent allegations regarding defendants' citizenship); 9/8/23 OSC at 3  
10 (warning Plaintiffs that failure to establish subject matter jurisdiction would result in  
11 dismissal without prejudice)). (*See generally* 2d Am. Compl.)

12 Although it is the court's practice to liberally grant leave to amend, especially in  
13 *pro se* cases, further amendment is not warranted in this case. Plaintiffs have twice  
14 amended their complaint, and their second amended complaint comes no closer to  
15 establishing subject matter jurisdiction than their initial complaint. The court therefore  
16 concludes that granting additional leave to amend would be futile.

17 Accordingly, the court DISMISSES this action without prejudice for lack of  
18 subject matter jurisdiction. The court DENIES Plaintiffs' pending motion for early  
19 discovery (Dkt. # 15) as moot.

20 Dated this 30th day of January, 2024

21   
22 JAMES L. ROBART  
United States District Judge